

## State Trial Courts

**VERDICT: Defense, water infiltration into new home.**

A Billings jury found that Dan Lowe Const. did not breach its contract with John & Jeanne Lee, and was not negligent in connection with water infiltration into their home.

Lees contracted with Lowe in 2002 to purchase a lot and build a dream home. Lowe performed all work in preparing the lot and constructing the house. It was designed as a modified daylight basement with the floor 4-5' below ground level and mostly finished. There are several window wells and egress windows. Total price for the lot and house, with change orders, was \$356,589. Construction was substantially completed in 7/02. Water began to enter the basement in the fall of 2003. Lees experienced numerous water problems whenever there was a precipitation event, varying in degree year to year. They alleged breach of implied and express warranties, breach of contract, negligence, negligent infliction of emotional distress, and rescission. Lowe contended that the home was built to all standards, practices, and local codes, and that the infiltration was not the fault of the builder but due to Lees over-watering the lawn and/or their bubbler systems.

Plaintiffs' expert: geotechnical engineer Steven Weisenberger, Billings.

Defendant's expert: hydrologist Thomas Osborne, Billings (not called as all of Defendant's evidence was presented through cross during Plaintiffs' case-in-chief).

On 10/16/08 Plaintiffs demanded that Lowe buy the home back for \$495,000 or pay \$200,000 damages, on 10/19 they demanded \$175,000; offer, \$25,000. Jury request, \$100,000+ for repair/remediation, \$5,000-\$15,000 per year emotional distress for each Plaintiff; jury suggestion, 0.

Jury deliberated 2 hours 3rd day; Judge Fagg.

**Lee v. Lowe Const., Yellowstone DV-06-174, 11/4/09.**

John Crist (Crist, Krogh & Nord), Billings, for Lees; James Halverson (Halverson & Gilbert), Billings, for Lowe (Chartis/AIG).

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